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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 1002

SOLOMON FRIED,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent,

—and—

NEW YORK LIFE INSURANCE COMPANY,

Defendant.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Solomon Fried prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered on March 5, 1957 upon the decision rendered on February 15, 1957 reversing the order of the United States District Court for the Eastern District of New York entered on November 4, 1955.

OPINIONS BELOW

The opinion of the District Court filed October 31, 1955 is unreported and is printed as Appendix A to this petition.

The opinion of the Court of Appeals is reported at 241 F. 2d 504 and is printed as Appendix B to this petition.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTION PRESENTED

Did Congress intend to exclude from levy for unpaid income taxes the total disability benefits payable under life insurance policies to the extent allowed an insured under a state statute?

STATUTES INVOLVED

Internal Revenue Code of 1954:

"§ 6334. PROPERTY EXEMPT FROM LEVY.

a—*Enumeration.* — There shall be exempt from levy—

1. *Wearing apparel and school books.* — Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family;

2. *Fuel, provisions, furniture, and personal effects.*—If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in his household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed $500 in value;

3. *Books and tools of a trade, business, or profession.*—So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate $250 in value.

* * * * *

c—*No Other Property Exempt.* — Notwithstanding any other law of the United States, no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a)."

The following is an excerpt from the Senate Report on the enactment of Section 6334 of the Internal Revenue Code of 1954. It is reported at page 4017 of the U. S. Code Congressional and Administrative News, Volume 3, 83rd Congress, Second Session, 1954. Legislative History. The identical statement appears in the House Report of said bill and is quoted at page 4556 of the same volume:

> "Subsection (c) of this section states that no property or rights to property, other than the properties specifically made exempt in this section, shall be exempt from levy by reason of any other law of the United States. Provisions of State law cannot grant an exemption from levy, and this subsection makes it clear that no other provision of Federal law shall exempt property from levy. This section is not intended to make any change with respect to the status of life insurance policies insofar as levy thereon is concerned."

Article 7, Section 166, paragraph 2 of New York Insurance Law (Book 27, McKinney's Consolidated Laws of New York, Ann.):

> "§ 166 * * *
>
> 2. No money or other benefits payable or allowable under any policy of insurance against disability arising from accidental injury or bodily infirmity or ailment of the person insured, shall be liable to execution for the purpose of satisfying any debt or liability of the insured, whether incurred before or after the commencement of the disability, except as provided in subsection four, and except further that (a) with respect to debts or liabilities incurred for necessaries furnished the insured after the commencement of disability, the exemption shall not include any income payment benefits payable as a result of any disability of the insured, and (b) with respect to all other debts

or liabilities incurred after the commencement of disability of the insured, the exemption of income payment benefits payable as a result of any disability of the insured shall not at any time exceed payment at rate of four hundred dollars per month for the period of such disability. * * * "

STATEMENT OF CASE

Petitioner, Solomon Fried, is a dentist by profession. While in the prime of his life, Dr. Fried acquired five life insurance policies with the New York Life Insurance Company on the following respective dates: June 8, 1922, June 5, 1925, January 20, 1928, February 3, 1928 and February 8, 1930. Each of these policies named his wife as beneficiary, and each contained a provision for the payment of benefits in the event that the insured became totally disabled. The total benefits payable under the five policies amounted to $250.00 per month.

On November 2, 1953 Dr. Fried became totally disabled and since then, has been unable to practice dentistry or engage in any other gainful occupation. From the date of such disability the petitioner became entitled to monthly benefits in the amount of $250.00.

On June 1, 1954 the District Director of Internal Revenue served a levy upon the New York Life Insurance Company for unpaid income taxes due from Dr. Fried for the years 1944, 1945, 1946, 1947, 1948 and 1949. The New York Life Insurance Company admitted that there became due to the petitioner $250.00 a month as disability benefits but refused to pay the same because of the levy filed by the government.

Thereupon petitioner instituted an action in the State Court against New York Life Insurance Company for benefits accruing to the date of such suit. The insurance company interpleaded the United States in such action. Whereupon the United States removed the action to the United States District Court pursuant to 28 U. S. C. A. 1345, 1346. Thereafter the insurance company obtained an order permitting it

to deposit the monthly payments accruing to the petitioner into the Registry of the Court.

Petitioner and the United States each moved for summary judgment on the ground that the sole issue was one of law. Hon. Robert A. Inch, Chief Judge, United States District Court for the Eastern District of New York, granted the petitioner's motion for summary judgment and denied the cross-motion of the government. Judge Inch's opinion is printed as Appendix A to this petition. On appeal by the government the United States Court of Appeals for the Second Circuit reversed the order of Judge Inch and directed that judgment be entered for the United States. The opinion is printed as Appendix B to this petition.

REASONS FOR GRANTING THE WRIT

1. The decision of the Court of Appeals is contrary to the intent of the Congress as set forth in the Senate and House Reports upon the enactment of Section 6334 of the Internal Revenue Code which is the subject of this controversy. The decision is also contrary to the public policy of preserving to a debtor a certain minimum of property necessary for his primitive needs.

2. The Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court. The question presented here is of great importance in that the identical issue is the subject of approximately 113 other proceedings filed by the government with various life insurance companies throughout the country. The granting of certiorari herein and the ultimate decision by this Court would undoubtedly resolve all of such proceedings.

ARGUMENT

1. In enacting Section 6334 of the Internal Revenue Code of 1954 Congress manifested the intention that life insurance policies be given a special status and treatment. Such intent is stated clearly in the Reports of the Senate and of the House (which are identical in language) as follows (3 U. S. Code Congressional and Administrative News 1954, 4017, 4556):

> "Subsection (c) * * *. This section is not intended to make any change with respect to the status of life insurance policies insofar as levy thereon is concerned."

It is thus apparent that Congress intended to continue the policy of special treatment for life insurance policies and to exempt them from levy as theretofore permitted by law. No other construction can be given to the above quoted sentence of the Congressional Report. It has long been the policy of the Federal courts to follow the law of the State in determining whether proceeds of life insurance policies were exempt from levy. In the 1954 Code Congress intended to continue such special status of life insurance policies insofar as levy is concerned. If such were not the intention of Congress, then why was it necessary to single out life insurance policies from all non-exempt property? The exempt property is set forth in Section 6334. If Congress did not intend to exempt life insurance policies, then there would be no need to make a reference in its Report to the status of life insurance policies.

Chief Judge Inch in his opinion, printed in Appendix A, construed the above quoted sentence of the Congressional Report as an intention by Congress to exempt from levy the total disability benefits under life insurance policies. On the other hand, the Court of Appeals gave no consideration to the above quoted sentence showing the Congressional intent. It is true that the Court of Appeals made mention of other

portions of the Congressional Report pertaining to subsection (c) but it did not decide the specific issue presented to it under the quoted sentence.

The government may argue that since subsection (c) states that "Notwithstanding any other law of the United States, no property or rights to property shall be exempt from levy, other than the property specifically made exempt by subsection (a)," the Court should not give any consideration to a New York State exemption statute. Such an argument would be without merit. The expression "Notwithstanding any other law of the United States" refers only to federal laws and not to the laws of the individual states. Such interpretation may be gathered from the Congressional Report, *supra,* which reads in part:

> "* * * this subsection makes it clear that no other provision of *federal law* shall exempt property from levy." (Emphasis added.)

Accordingly, Judge Inch properly held, that by reason of Section 166 of the New York State Insurance Law the disability benefits should be paid to the petitioner.

The Court of Appeals for the Second Circuit relied on *In re Rosenberg's Will,* 269 N. Y. 247, *certiorari denied* 298 U. S. 669. That case involved income from a spendthrift trust and did not in any wise relate to proceeds of life insurance policies. Thus, it is clearly distinguishable from the case at bar.

The Supreme Court of the United States has held that state exemption statutes may be binding upon the United States. In *Fink* v. *O'Neil,* 106 U. S. 272, the Court rejected the government's contention that the Wisconsin exemption statute interfered with the sovereign power of the government and stated (p. 284):

> "Nothing can be more clear than this, as a recognition by Congress that in case of executions upon judgments in civil actions, the United States are subject to the same exemptions as apply to private persons by

> the law of the state in which the property levied upon is found."

In *Custer* v. *McCutcheon*, 283 U. S. 514, the Court quoted with approval from *Fink* v. *O'Neil*, *supra*, and said (p. 519):

> "The contention of the Government that on grounds of public policy the sovereign ought not to be subject to exemptions binding on private suitors was overruled * * *.
>
> "We find no decision of the Supreme Court of Idaho exempting the sovereign from the provisions of the statute, nor does examination of other cognate sections of the Idaho Compiled Statutes disclose any matter which would indicate such a purpose. We think that in the interest of uniformity and in the absence of either express state decision or provision by Congress to the contrary, the statute is to be held applicable to all plaintiffs seeking to avail themselves of the writ of execution therein provided, including the United States."

The interpretation by the Court of Appeals of Section 6334 is also contrary to the public policy of preserving to a debtor a certain minimum of property. In Professor Oleck's treatise *Debtor-Creditor Law* (1953 ed.) it is stated (p. 60):

> "By statute, in practically all jurisdictions, certain property interests of a judgment debtor are exempt from levy and sale on execution or other legal process, by his creditors. The exemption exists not as a characteristic of the property, but in relation to the owner or possessor-debtor, for whose benefit the statute declares the exception. The public purpose is to preserve the debtor a minimum of assets at least sufficient (theoretically) to prevent him or his dependents from becoming public charges."

The New York Supreme Court in construing the insurance exemption statute has said (*Abrams* v. *Parker, et al.*, 41 N. Y. S. 2d 434, 435 (not officially reported):

> "The statute was obviously intended to secure to persons suffering from physical infirmity a modicum of income for their primitive needs, free from claims and demands arising from business hazards or imprudent investments. It was enacted for their benefit and protection, and should be given an interpretation that will not defeat its purpose."

See also:

Dellefield v. *Block*, (D. C. S. D. N. Y.) 40 F. Supp. 616.

The effect of the Court of Appeals decision would render totally disabled persons helpless and without means of subsistence.

Accordingly, this Court is respectfully urged to grant certiorari so that a more realistic and humane interpretation will ultimately be given by this Court to the statute in question.

2. The question raised here is of great importance and should be settled by this Court for the reason that there are approximately 113 other proceedings, identical in nature with the instant case, which have been filed by the government with various life insurance companies throughout the United States. Such statement is made from information contained in the *Life Insurance Facts Book* for 1955, published by the Institute of Life Insurance Companies, as related to information reported in the New York Life Insurance Company annual statement for 1954.

A determination by this Court of the issue presented herein should dispose of the approximately 113 similar proceedings now pending and would thereby avoid a multiplicity of lawsuits.

For the foregoing reasons petitioner respectfully requests that this Court grant the within petition for a writ of certiorari.

Respectfully submitted,

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VINCENT J. CROWE,
Of Counsel.

May 10, 1957.

APPENDIX A

Opinion of District Court dated October 31, 1955

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

[Tr.]

Dated: October 31, 1955

INCH, *Ch. J.*

This consolidated action is a consolidation of an action by Solomon Fried against United States of America and New York Life Insurance Company, to recover from New York Life Insurance Company the proceeds of total disability benefit payments under certain life insurance policies issued to Solomon Fried by New York Life Insurance Company, on the ground that Solomon Fried is entitled to said proceeds, and an action by United States of America against New York Life Insurance Company and Solomon Fried, to recover from New York Life Insurance Company the said proceeds under said policies, on the ground that United States of America is entitled to said proceeds because Solomon Fried is indebted to United States of America for tax arrears in a sum in excess of said proceeds.

Three motions are before this Court; a motion by plaintiff, Solomon Fried, for summary judgment, on the complaint, in favor of said plaintiff and against defendants, United States of America and New York Life Insurance Company, in the sum of $3,695.50, part of said proceeds, heretofore paid into this Court; a cross-motion by defendant, United States of America, for summary judgment, dismissing the complaint, on the ground that the Court is without jurisdiction of said defendant, for the reason that there is no statutory provision by which said defendant consents to be sued in this type of action; and a cross-motion by defendant, United States of America, for summary judgment, on its cross-claim, in favor of said defendant and against plaintiff, Solomon Fried, in said sum of $3,695.50, part of said proceeds, heretofore paid into this Court.

With respect to the cross-motion by defendant, United States of America, for summary judgment, dismissing the complaint: Said defendant did not object to the application for consolidation of said actions and waived notice of settlement of the order consolidating said actions, which was made for the specific purposes of avoiding the technical objection to the Court's jurisdiction of said defendant and of disposing of said issue of jurisdiction and leaving the sole issue as to whether plaintiff, Solomon Fried, or defendant, United States of America, is entitled to said proceeds. This motion completely ignores the substance and spirit of the order of consolidation, in that it is based on the assumed continued separate existence of the actions which have been consolidated by said order, and violates the specific purposes of said order, in that it attempts to raise said objection and attempts to create said issue of jurisdiction. Therefore, this motion is denied.

With respect to the motion by plaintiff, Solomon Fried, for summary judgment, on the complaint, and the cross-motion by defendant, United States of America, for summary judgment, on its cross-claim: There is no issue of fact. The sole issue is one of law, to wit, whether plaintiff, Solomon Fried, or defendant, United States of America, is entitled to the proceeds of total disability benefit payments under said policies. Subdivision 2 of Section 166 of the New York Insurance Law provides, in part, that "no money or other benefits payable or allowable under any policy of insurance against disability, arising from accidental injury or bodily infirmity or ailment of the person insured, shall be liable to execution for the purpose of satisfying any debt or liability of the insured * * *." This statute is an exemption statute and, as such, must be liberally construed and the interests of an insured in policies are to be construed, whenever possible, so as to come within the exemptions of the statute (*Dellefield* v. *Block*, D. C., S. D., N. Y., 40 F. S. 616). Applying said rule to the instant case, the language of this statute indicates that the moneys payable to plaintiff, Solomon Fried, under the policies herein against his total disability come within the exemptions of the statute. Furthermore, the hold-

ings of the United States Supreme Court, in *Fink* v. *O'Neil*, 106 U. S. 272, and *Custer* v. *McCutcheon*, 283 U. S. 514, that the exemption statutes of Wisconsin and Idaho are binding on the United States of America, and the statements of Congress, in the Senate and House Reports of the bill which was enacted as the Internal Revenue Code of 1954, concerning Section 6334 thereof, that said section is not intended to make any change with respect to the status of life insurance policies insofar as levy thereon is concerned, and the salutary public purpose of exemption statutes, to wit, the protection of disabled persons, by securing to them a modicum of income for their primitive needs, free from claims against them, and the rule that such statutes should be given an interpretation that will not defeat their purpose (*Oleck on Debtor Creditor Law; Abrams* v. *Parker*, 41 N. Y. S. 2d 434), persuade me to hold that this exemption statute of New York is binding on the United States of America and the moneys payable to plaintiff, Solomon Fried, under the policies herein against his total disability are exempt from levy by the United States of America. It follows that, as a matter of law, plaintiff, Solomon Fried, is entitled to the proceeds of total disability benefit payments under the policies herein and defendant, United States of America, is not entitled to said proceeds under said policies and plaintiff, Solomon Fried, is entitled to judgment, on the complaint, and defendant, United States of America, is not entitled to judgment on its cross-claim. Therefore, the motion by plaintiff, Solomon Fried, for summary judgment, on the complaint, is granted and the cross-motion by defendant, United States of America, for summary judgment, on its cross-claim, is denied.

The foregoing determination with respect to said motions, now before this Court, apply only to the total disability benefit payments under the policies herein and is not intended and shall not be deemed to, in any way, affect the principal amounts of said policies, which principal amounts, under said policies, remain separate and distinct from the total disability benefit payments thereunder.

Settle orders, on each motion.

ROBERT A. INCH

Chief Judge, U. S. District Court

APPENDIX B

Opinion of Court of Appeals dated February 15, 1957

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 18-19—October Term, 1956.

(Argued December 13, 1956 Decided February 15, 1957.)

Docket Nos. 23968-23969

[CAPTION OMITTED]

Before:

SWAN, MEDINA and WATERMAN,

Circuit Judges.

Appeal from District Court for the Eastern District of New York, Inch, *Chief Judge.* The United States appeals from an order granting appellee Fried's motion and denying the government's motion on cross-motions for summary judgment. Reversed and judgment directed for the United States

MORRIS K. SIEGEL (Morris K. Siegel, Vincent J. Crowe, on the brief), New York City, *for Plaintiff-Appellee.*

CHARLES K. RICE, Acting Assistant Attorney General, Lee A. Jackson, Robert N. Anderson, John J. Kelley, Jr., Attorneys, Dept. of Justice, Washington, D. C., Leonard P. Moore, United States Attorney, Elliott Kahaner, Assistant United States Attorney, *for Defendant-Appellant.*

WATERMAN, *Circuit Judge:*

Solomon Fried, born Dec. 16, 1898, took out five policies of life insurance on his life with New York Life Insurance

Company between June 8, 1922 and February 8, 1930, naming his wife to be the beneficiary thereof upon his death. The total face amount of these policies is $25,000. Fried reserved the right to change the beneficiary. The policies were Twenty-Payment Life policies, and at all times material here were in full force and effect.

Fried also paid twenty additional annual premiums under each policy contract in excess of the premiums required to insure his life, in return for which the insurance company contracted to pay Fried, if he should become totally and presumably permanently disabled before age 60, a total of $250. each month that such disability continued. Each policy further provided that Fried during his lifetime, and without the consent of the beneficiary named by him to receive the policy proceeds upon his death, could receive every benefit, exercise every right, and enjoy every privilege conferred upon the insured.

In December, 1951, the Bureau of Internal Revenue assessed income tax deficiencies against Fried in the sum of $263,174.69, representing alleged deficiencies for the years 1944, 1945, 1946, 1947, 1948 and 1949.

New York Life Insurance Company was promptly served that month with a notice of an income tax lien. In January, 1952, a copy of the lien was filed, warrants of distraint were issued, and levy was made upon the company. In March, 1952, a final notice and demand was served upon it.

On November 2, 1953, Fried became totally and presumably permanently disabled. The insurance company admitted its contract liability to pay him $250. each month from that date forward as long as he remained so disabled, but declined to make payment because of the government's levy. Fried sued. New York Life sought to have the United States joined as a necessary party because of the levy. This was done and Fried's suit was then removed to the U. S. District Court. In the meantime the insurance company also declined to turn over any of these monthly payments to the government and the United States sued it under 26 U. S. C. A. § 3710 for non-compliance with the levy, notice and demand. Fried was then joined as a defendant in this

second suit; the two suits were consolidated; New York Life paid into court the disability benefit payments that had by then accrued; Fried and the United States each moved for summary judgment. Fried's motion was granted and the government appeals.

The sole question before us is whether the income tax lien attaches to these monthly disability benefit payments. The Court below held that it did not. We hold otherwise, reverse the judgment below, and direct that judgment be entered for the United States.

It is admitted that Fried had a contractual right to these sums each month which the insurance company could not defeat. Therefore (unless prevented by some limitation upon it) the government by proper levy could require that these sums be applied upon Fried's delinquent taxes. The sufficiency of the undertakings of the government to prevent these payments from coming into the possession of Fried and to be so applied upon his delinquent taxes is not questioned.

The Court below held that a limitation upon the power of the United States to enforce its lien does exist and that the government is prevented from reaching these monthly avails of these insurance contracts because under a New York statute these sums are not "liable to execution for the purpose of satisfying any debt or liability of the insured."[1] It is

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1 Article 7, Section 166, paragraph 2 of New York Insurance Law (Book 27, McKinney's Consolidated Laws of New York, Ann.) reads as follows:

"§ 166 * * *

"2. No money or other benefits payable or allowable under any policy of insurance against disability arising from accidental injury or bodily infirmity or ailment of the person insured, shall be liable to execution for the purpose of satisfying any debt or liability of the insured, whether incurred before or after the commencement of the disability, except as provided in subsection four, and except * * *"

The second paragraph of Section 166 was enacted into law as Section 55-b of the New York Insurance Law and was entitled as follows: "Exemption of disability insurance from execution." Chapter 626, Laws of 1934, New York State.

well settled law, however, that State exemption statutes are ineffective against a Federal statutory lien for federal taxes. *Kieferdorf* v. *Commissioner of Internal Revenue,* 142 F. 2d 723, 725 (9 Cir. 1944); *cert. denied,* 323 U. S. 733, 65 S. Ct. 69 (1944), 89 L. Ed. 588; *Kyle* v. *McGuirk,* 82 F. 2d 212, 213 (3d Cir. 1936); *Shambaugh* v. *Scofield,* 132 F. 2d 345 (5th Cir. 1942); *Cannon* v. *Nicholas,* 80 F. 2d 934, 935 (10th Cir. 1935); *Jones* v. *Kemp,* 144 F. 2d 478, 480 (10th Cir. 1944).

The New York Court of Appeals agrees that New York may not interfere with the power of Congress to levy, and then to collect, federal taxes on income. *In re Rosenberg's Will,* 269 N. Y. 247 (1935), 199 N. E. 206, 105 A. L. R. 1238; *certiorari denied,* 298 U. S. 669, 56 S. Ct. 834, 80 L. Ed. 1392.

A similar New York statute expressing the same state policy of protecting a disabled person's disability benefit payments from creditors' levies [2] was held ineffective against the federal tax lien in *U. S.* v. *Ocean Accident & Guarantee Corporation, Ltd.,* 76 F. Supp. 277 (S. D. N. Y. 1948).

If Congress had provided in the Internal Revenue Code for such an exemption, or if Congress had adopted as exemptions under the Code the exemptions set forth under State law, the holdings relied upon by the court below in *Fink* v. *O'Neil,* 106 U. S. 272, 1 S. Ct. 325, 27 L. Ed. 196 and in *Custer* v. *McCutcheon,* 283 U. S. 514, 51 S. Ct. 530, 75 L. Ed. 1239, might have been applicable, but no such provisions appear.[3]

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2 Article 2, Section 33 of New York Workmen's Compensation Law (Book 64, McKinney's Consolidated Laws of New York, Ann.) was the statute involved. It reads as follows:

> "§ 33. Assignments; exemptions
>
> "Compensation or benefits due under this chapter shall not be assigned, released or commuted except as provided by this chapter, and shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived. Compensation and benefits shall be paid only to employees or their dependents, except * * *"

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3 26 U. S. Code, 1952 ed. Sections 3691 and 3692 read as follows:

> "Sec. 3691. Property Exempt from Distraint.
>
> (a) Enumeration.—There shall be exempt from distraint

In fact the language of the House Ways and Means and Senate Finance Committees contained in their respective Committee Reports to their respective Houses of Congress

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and sale, if belonging to the head of a family—

(1) School books and wearing apparel.—The school books and wearing apparel necessary for such family; also

(2) Arms.—Arms for personal use;

(3) Livestock.—One cow, 2 hogs, 5 sheep and the wool thereof, provided the aggregate market value of said sheep shall not exceed $50;

(4) Fodder.—The necessary food for such cow, hogs, and sheep, for a period not exceeding thirty days;

(5) Fuel.—Fuel to an amount not greater in value than $25;

(6) Provisions.—Provisions to an amount not greater than $50;

(7) Household furniture.—Household furniture kept for use to an amount not greater than $300; and

(8) Books and tools of trade or profession.—The books, tools, or implements, of a trade or profession, to an amount not greater than $100."

"Sec. 3692. Levy.

In case of neglect or refusal under section 3690, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property and rights to property, except such as are exempt by the preceding section, belonging to such person, or on which the lien provided in section 3670 exists, for the payment of the sum due, with interest and penalty for nonpayment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy."

26 U. S. Code, Section 6334 of the 1954 Internal Revenue Code, reads as follows:

"Sec. 6334. Property Exempt from Levy.

(a) Enumeration.—There shall be exempt from levy—

(1) Wearing apparel and school books.—Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family;

(2) Fuel, provisions, furniture, and personal effects.—If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in his household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed $500 in value;

with reference to Section 6334(c) of the I. R. C. of 1954 demonstrate that no such provisions were even contemplated when the 1954 Code was under consideration.[4]

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(3) Books and tools of a trade, business or profession. —So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate $250 in value.

* * * * *

(c) No Other Property Exempt.—Notwithstanding any other law of the United States, no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a)."

26 U. S. Code, Section 6331 of the 1954 Internal Revenue Code reads as follows:

"Sec. 6331. Levy and Distraint.

(a) Authority of Secretary or Delegate.—If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. * * *

(b) Seizure and Sale of Property.—The term 'levy' as used in this title includes the power of distraint and seizure by any means. In any case in which the Secretary or his delegate may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible)."

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4 In the Report of the House Ways & Means Committee (House Report No. 1337, 83rd Congress, 2d Session, at pp. A408-A409) and in the Report of the Senate Finance Committee (Senate Report No. 1622, 83rd Congress, 2d Session, at pp. 577-578) the identical language appears, as follows:

"Subsection (c) of this section states that no property or rights to property, other than the properties specifically made exempt in this section, shall be exempt from levy by reason of any other law of the United States. *Provisions of State law cannot grant an exemption from levy*, and this subsection makes it clear that no other provision of Federal law shall exempt property from levy. This section is not intended to make any change with respect to the status of life insurance policies insofar as levy thereon is concerned." (Italics added.)

Finally it is argued upon appeal that these regularly recurring sums due and payable month after month to this living delinquent taxpayer as long as he lives, sums that will cease being payable upon his death, are similar to the "proceeds" of a life insurance policy due and payable to a beneficiary after the death of an insured delinquent taxpayer, and that our holding in *Rowen* v. *Commissioner,* 215 F. 2d 641, requires us to affirm the decision below. We find this contention difficult to comprehend. In *Rowen,* 215 F. 2d 641 at 649, we stated that the New York statute applicable to our decision in that case was *not* an exemption statute but a statute declaratory of a substantive right. In support of that rationale we compared the provision of the applicable statute there with the provision of the statute applicable here, and we there pointed out that the statute involved here *is* an express exemption provision. We also clearly indicated that the *Kieferdorf* case would be followed by us whenever an express exemption provision should be before us. And also see *United States* v. *Truax,* 223 F. 2d 229, 231 (5th Cir. 1955). We find no substance whatever to this contention.

Reversed, and it is ordered that judgment be entered for the United States below.

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 1002

SOLOMON FRIED, PETITIONER

v.

UNITED STATES OF AMERICA AND NEW YORK LIFE INSURANCE COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of New York (Pet. 11–13) is reported at 124 F. Supp. 345. The opinion of the Court of Appeals (Pet. 14–20) is reported at 241 F. 2d 504.

JURISDICTION

The judgment of the Court of Appeals was entered on February 15, 1957. (Pet. 14.) The petition for a writ of certiorari was filed on May 14, 1957. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

QUESTION PRESENTED

Whether disability benefit payments accruing to taxpayer under certain insurance policies were exempted from a federal tax levy by a New York State exemption statute.

STATUTES INVOLVED

Internal Revenue Code of 1939:

SEC. 3690. AUTHORITY TO DISTRAIN.

If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with such interest and other additional amounts as are required by law, by distraint and sale, in the manner provided in this subchapter, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid.

(26 U. S. C. 1952 ed., Sec. 3690.)

SEC. 3691. PROPERTY EXEMPT FROM DISTRAINT.

(a) *Enumeration.*—There shall be exempt from distraint and sale, if belonging to the head of a family—

(1) *School books and wearing apparel.*—The school books and wearing apparel necessary for such family; also

(2) *Arms.*—Arms for personal use;

(3) *Livestock.*—One cow, 2 hogs, 5 sheep and the wool thereof, provided the aggregate market value of said sheep shall not exceed $50;

(4) *Fodder.*—The necessary food for such cow, hogs, and sheep, for a period not exceeding thirty days;

(5) *Fuel.*—Fuel to an amount not greater in value than $25;

(6) *Provisions.*—Provisions to an amount not greater than $50;

(7) *Household furniture.*—Household furniture kept for use to an amount not greater than $300; and

(8) *Books and tools of trade or profession.*—The books, tools, or implements, of a trade or profession, to an amount not greater than $100.

* * * * *

(26 U. S. C. 1952 ed., Sec. 3691.)

SEC. 3692. LEVY.

In case of neglect or refusal under section 3690, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property and rights to property, except such as are exempt by the preceding section, belonging to such person, or on which the lien provided in section 3670 exists, for the payment of the sum due, with interest and penalty for nonpayment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy.

(26 U. S. C. 1952 ed., Sec. 3692.)

Internal Revenue Code of 1954:

SEC. 6334. PROPERTY EXEMPT FROM LEVY.

(a) *Enumeration.*—There shall be exempt from levy—

(1) *Wearing apparel and school books.*—Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family;

(2) *Fuel, provisions, furniture, and personal effects.*—If the taxpayer is the head of a fam-

ily, so much of the fuel, provisions, furniture, and personal effects in his household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed $500 in value;

(3) *Books and tools of a trade, business, or profession.*—So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate $250 in value.

* * * * *

(c) *No Other Property Exempt.*—Notwithstanding any other law of the United States, no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a).

(26 U. S. C. 1952 ed., Supp. II, Sec. 6334.)

SEC. 7851. APPLICABILITY OF REVENUE LAWS.

(a) *General Rules.*—Except as otherwise provided in any section of this title—

* * * * *

(6) *Subtitle F.*—

* * * * *

(B) *Assessment, collection, and refunds.*—Notwithstanding the provisions of subparagraph (A), and notwithstanding any contrary provision of subchapter A of chapter 63 (relating to assessment), chapter 64 (relating to collection), or chapter 65 (relating to abatements, credits, and refunds) of this title, the provisions of part II of subchapter A of chapter 28 and chapters 35, 36, and 37 (except section 3777) of subtitle D of the Internal Revenue Code of 1939 shall remain in effect until January 1, 1955, and shall also be applicable

to the taxes imposed by this title. On and after January 1, 1955, the provisions of subchapter A of chapter 63, chapter 64, and chapter 65 (except section 6405) of this title shall be applicable to all internal revenue taxes (whether imposed by this title or by the Internal Revenue Code of 1939), notwithstanding any contrary provision of part II of subchapter A of chapter 28, or of chapter 35, 36, or 37, of the Internal Revenue Code of 1939. The provisions of section 6405 (relating to reports of refunds and credits) shall be applicable with respect to refunds or credits allowed after the date of enactment of this title, and section 3777 of the Internal Revenue Code of 1939 is hereby repealed with respect to such refunds and credits.

* * * * *

(26 U. S. C. 1952 ed., Supp. II, Sec. 7851.)

27 McKinney's Consolidated Laws of New York Annotated:

SEC. 166. *Exemption of proceeds and avails of certain insurance annuity contracts*

* * * * *

2. No money or other benefits payable or allowable under any policy of insurance against disability arising from accidental injury or bodily infirmity or ailment of the person insured, shall be liable to execution for the purpose of satisfying any debt or liability of the insured, whether incurred before or after the commencement of the disability, except as provided in subsection four, and except further that (a) with respect to debts or liabilities incurred for necessaries furnished the insured

after the commencement of disability, the exemption shall not include any income payment benefits payable as a result of any disability of the insured, and (b) with respect to all other debts or liabilities incurred after the commencement of disability of the insured, the exemption of income payment benefits payable as a result of any disability of the insured shall not at any time exceed payment at rate of four hundred dollars per month for the period of such disability. When a policy provides for lump sum payment because of a dismemberment or other specific loss of insured, such payment shall be exempt from execution of insured's creditors. The provisions of this subsection shall not affect the assignability of any benefit otherwise assignable.

* * * * *

STATEMENT

Taxpayer took out five policies of life insurance on his life with New York Life Insurance Company between June 8, 1922, and February 8, 1930, naming his wife to be the beneficiary thereof upon his death. The total face amount of these policies is $25,000. Taxpayer reserved the right to change the beneficiary. The policies were twenty-payment life policies, and, at all times here material, were in full force and effect. (Pet. 14–15.)

Taxpayer also paid twenty additional annual premiums under each policy contract in excess of the premiums required to insure his life, in return for which the insurance company contracted to pay taxpayer, if he should become totally and presumably permanently disabled before age 60, a total of $250 each

month that such disability continued. Each policy further provided that taxpayer during his lifetime, and without the consent of the beneficiary named by him to receive the policy proceeds upon his death, could receive every benefit, exercise every right, and enjoy every privilege conferred upon the insured. (Pet. 15.)

In December, 1951, the Bureau of Internal Revenue assessed income tax deficiencies against taxpayer in the sum of $263,174.69, representing alleged deficiencies for the years 1944, 1945, 1946, 1947, 1948, and 1949. (Pet. 15.)

The New York Life Insurance Company was promptly served that month with a notice of an income tax lien. In January, 1952, a copy of the lien was filed, warrants of distraint were issued, and levy was made upon the company. In March, 1952, a final notice and demand was served upon it. (Pet. 15.)

On November 2, 1953, taxpayer became totally and presumably permanently disabled. The insurance company admitted its contract liability to pay him $250 each month from that date forward as long as he remained so disabled, but declined to make payment because of the Government's levy. Taxpayer sued the New York Life Insurance Company which in turn sought to have the United States joined as a necessary party because of the levy. This was done, and taxpayer's suit was then removed to the United States District Court. In the meantime, the insurance company also declined to turn over any of the monthly payments to the Government, and the United States sued it under Section 3710, Internal Revenue Code of 1939, for noncompliance with the levy, notice,

and demand. Taxpayer was then joined as a defendant in this second suit; the two suits were consolidated; the New York Life Insurance Company paid into court the disability benefit payments that had by then accrued; and taxpayer and the United States each moved for summary judgment. Taxpayer's motion was granted, and the Government appealed. (Pet. 15–16.) The Court of Appeals reversed the judgment of the District Court, and held that the United States was entitled to levy upon the taxpayer's disability benefits.

ARGUMENT

The Government levied upon all of taxpayer's rights in the insurance involved prior to June, 1954, the date this suit was instituted. Most of the disability benefit payments paid into court accrued prior to January 1, 1955, to which date Section 3691 (a) of the Internal Revenue Code of 1939, *supra*, pp. 2–3, was in effect. A few accrued subsequent to January 1, 1955, the date Section 6334 of the Internal Revenue Code of 1954, *supra*, pp. 3–4, went into effect. See Section 7851 (a) (6) (B) of the 1954 Code, supra, pp. 4–5.

While we believe that any difference between the exemptions granted by the 1939 and 1954 Codes is immaterial here, both are applicable. Section 3691 (a) of the 1939 Code exempts from distraint and sale only the following items, if they belong to the head of a family: school books and wearing apparel; arms for personal use; and livestock, fodder, fuel, provisions, household furniture, and books and tools

of trade or profession, in specifically limited quantities. Section 6334 (a) of the 1954 Code exempts the following items from levy: wearing apparel and school books; fuel, provisions, furniture, and personal effects of the head of a family, not exceeding $500 in value; and books and tools of a trade, business, or profession, not to exceed in the aggregate $250 in value. Section 6334 specifically provides:

> (c) *No Other Property Exempt.*—Notwithstanding any other law of the United States, no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a).

Despite the clear and unambiguous language of the statute, taxpayer asserts that the decision below is contrary to the intent of Congress, pointing not to any statutory provision, but merely to an excerpt from the following Congressional Committee reports respecting Section 6334 (c) of the 1954 Code, *supra*, pp. 3–4 (H. Rep. No. 1337, 83d Cong., 2d sess., p. A409; S. Rep. No. 1622, 83d Cong., 2d sess., p. 578):

> Subsection (c) of this section states that no property or rights to property, other than the properties specifically made exempt in this section, shall be exempt from levy by reason of any other law of the United States. Provisions of State law cannot grant an exemption from levy, and this subsection makes it clear that no other provision of Federal law shall exempt property from levy. This section is not intended to make any change with respect to the status of life insurance policies insofar as levy thereon is concerned.

Taxpayer contends that the last sentence from the above statement shows "that Congress intended to continue the policy of special treatment for life insurance policies and to exempt them from levy as theretofore permitted by law"; and that "It has long been the policy of the Federal courts to follow the law of the State in determining whether proceeds of life insurance policies were exempt from levy." (Pet. 6.) Taxpayer cites no authority whatever in support of these statements, nor did he cite such authority to the Court of Appeals. To the contrary, this Court held as early as 1882 that state exemption statutes are not applicable against the United States unless Congress has so provided. *Fink* v. *O'Neil,* 106 U. S. 272; *Custer* v. *McCutcheon,* 283 U. S. 514; *Jones* v. *Kemp,* 144 F. 2d 478 (C. A. 10th); *Shambaugh* v. *Scofield,* 132 F. 2d 345 (C. A. 5th); *United States* v. *Heffron,* 158 F. 2d 657 (C. A. 9th), certiorari denied, 331 U. S. 831. In those cases where the Government has sought to collect an insured's delinquent taxes out of his life insurance, it has been invariably held that state exemption statutes cannot defeat a federal tax claim. *Kieferdorf* v. *Commissioner,* 142 F. 2d 723 (C. A. 9th), certiorari denied, 323 U. S. 733; *Kyle* v. *McGuirk,* 82 F. 2d 212 (C. A. 3d); *Cannon* v. *Nicholas,* 80 F. 2d 934 (C. A. 10th); *Knox* v. *Great West Life Assur. Co.,* 109 F. Supp. 207 (E. D. Mich.), affirmed *per curiam,* 212 F. 2d 784 (C. A. 6th). See also, directly in point, *United States* v. *Ocean Accident & Guarantee Corp.,* 76 F. Supp. 277, 278 (S. D. N. Y.), where it was held that a state statute exempting workmen's compensation benefits from the

claims of creditors of the workman did not bar the tax claims of the United States because "such exemption cannot be availed of against the Government, which has not by statute or otherwise provided for such exemption."

The Court of Appeals was clearly correct in distinguishing *Fink* v. *O'Neil, supra,* and *Custer* v. *McCutcheon, supra.* The particular state exemption statutes there held effective against the United States had been made so by Congress.

CONCLUSION

The decision of the Court of Appeals is correct, and there is no conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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